

1 **PAUL J. CARTER, ESQ. (SBN #189780)**
2 **BERGKVIST, BERGKVIST & CARTER, LLP**
3 **400 OCEANGATE, SUITE 800**
4 **LONG BEACH, CALIFORNIA 90802**
5 **(562) 435-1426**

6 Attorney for Plaintiff,
7 JAMES BIEBER

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

Assigned for all purposes

10 JAMES BIEBER

Case No.

Judge David A. Hoffer

30-2020-01145593-CU-DF-CJC

11
12 Plaintiffs,

13 v.

COMPLAINT FOR:

1. DEFAMATION.
2. DEFAMATION PER QUOD.
3. TRADE LIBEL.
4. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE.

14 GENE JAMES and DOES 1-50 inclusive,

15 Defendants

16 Plaintiff JAMES BIEBER (hereinafter referred to as "Plaintiff/BIEBER")

17 alleges:

18 1. Defendant, GENE JAMES (hereinafter referred to as
19 "Defendant/JAMES") is an individual residing within the County of Orange, State of
20 California.

21 2. Plaintiff is ignorant of the true names and capacity of defendants sued in
22 this complaint as DOES 1 through 50, inclusive, and therefore sues these defendants by

COMPLAINT

1 these fictitious names. Plaintiff will amend this complaint once the true names and
2 capacities are ascertained. The Plaintiff is informed and believes and thereon allege that
3 each of the fictitiously named defendants are responsible in some manner for the
4 occurrences herein alleged, and that the Plaintiff's damages as herein alleged were
5 proximately caused by their conduct.
6

7 3. Plaintiff is informed and believes, and thereon alleges, that at all times
8 relevant hereto, defendants, and each of them, were agents, servants, and employees of each
9 of the remaining co-defendants, and in doing the things herein alleged, were acting within
10 the purpose and scope of such agency, service and employment, with the permission,
11 consent, and knowledge of each of the remaining co-defendants.
12

13 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

14 4. At all times relevant herein, Plaintiff was and is a resident of San
15 Clemente, and owns Bieber Communications, Inc., a business involved in print mailing for
16 political campaigns.
17

18 5. Defendant JAMES is a resident of San Clemente.

19 6. On or about December 3, 2018, defendant JAMES reached out to
20 Plaintiff via an email to meet and discuss Defendant JAMES' failed run for San Clemente
21 City Council.
22

23 7. Over the next several months Plaintiff and Defendant JAMES became
24 friends and spent time attending events together and talking about strategy for Defendant
25 JAMES' next run for city council in November 2020.

26 8. On or about May 8, 2019 San Clemente city councilman Steve Schwartz,
27 serving as Mayor, died, forcing a special election for the open city council seat. The special
28

1 election was set for November 5, 2019.

2 9. Defendant JAMES, who served in the Army, on multiple times informed
3 both Plaintiff and political consultant David Ellis, that he received the Legion of Merit (a
4 prestigious military honor) during his service in the United States Army.
5

6 10. Plaintiff asked Defendant JAMES to clarify what award JAMES received
7 from his service. Plaintiff specifically asked whether defendant JAMES received the Legion
8 of Merit or Medal of Merit. Defendant JAMES wrote in a text to Bieber stating that he was
9 awarded the “Legion.”
10

11 11. In reliance on Defendant JAMES’ representations, Plaintiff sent an email
12 appealing to members of the Orange County Republican Central Committee, advising that
13 Defendant JAMES received the Legion of Merit, describing how prestigious this award was
14 and even providing a link to Wikipedia for the Legion of Merit.
15

16 12. Defendant JAMES, along with his campaign manager Wendy Shrove,
17 was sent a copy of this email advocating for Defendant JAMES’ endorsement. Wendy
18 Shrove read Plaintiff’s email sent to members of the Orange County Republican Central
19 Committee that highlighted JAMES’ false claim that he received Legion of Merit and
20 replied back to the email to Plaintiff and also to defendant JAMES, stating: “Great letter,
21 Jim! Thank you.”
22

23 13. The fact is that Defendant JAMES was never awarded the Legion of
24 Merit.

25 14. At no time did Defendant JAMES correct the misrepresentation that he
26 was awarded the Legion of Merit. To the contrary, JAMES sent a text to David Ellis
27 restating that he received the Legion of Merit, advising: “its not for valor... it’s not for my
28

1 combat... its for service...”

2 15. Plaintiff, through his company Bieber Communications, produced three
3 campaign mailers that prominently featured defendant JAMES receiving the Legion Merit.
4 These mailers were sent to both defendant JAMES as well as his campaign manager Wendy
5 Shrove, who are both registered voters in San Clemente. In response, defendant JAMES said
6 nothing and took no action on the publication of his false statement until he was contacted
7 by former San Clemente Mayor Bob Baker who had looked up the recipients of the Legion
8 of Merit and discovered that defendant JAMES was never awarded the Legion of Merit.
9

10 16. After it became known that defendant JAMES did not receive the Legion
11 of Merit, he offered conflicting statements on when he first learned that he received a
12 “Meritorious Service Medal” rather than the Legion of Merit.
13

14 17. Defendant JAMES claimed he was unaware that he was not awarded the
15 Legion of Merit, explaining “only recently did I know the outcome and only after I
16 requested my DD214 in order to get services at the VA.” Defendant JAMES then wrote to
17 Fred Whitaker, chairman of the Orange County Republican Party advising: “The
18 conversation with Bieber and Ellis did prompt me to research to confirm if I had received
19 the award. I received an updated copy of my DD214 and learned it had never been
20 approved and I had received the next lower award the Meritorious Service Medal.”
21 Defendant JAMES further claimed in the *San Clemente Times* that he wasn’t aware of what
22 he awards he received for his service “nor did either award ever follow me.”
23

24 18. On Saturday, May 2, 2020 Melissa Phelps, a local San Clemente activist,
25 shared with Plaintiff texts she and two other local residents, Anthony Rubolino and Martina
26 McBurney-Wheeler, had received from defendant JAMES earlier that day. Phelps,
27
28

1 Rubolino, Wheeler and defendant JAMES had been discussing various issues, including
2 whether defendant JAMES had made an alliance with a rival councilmember (Chris Hamm)
3 who had been at defendant JAMES' home. Defendant JAMES demanded to know how they
4 (Phelps, Rubolino and Wheeler) knew councilman Hamm was at his home, and angrily
5 stated there was a risk to his home. No one would tell defendant JAMES how they knew
6 Hamm had been at defendant JAMES' home and pointed out that such information was not
7 a "safety risk." Defendant JAMES replied in a text: "So you refused to tell me... Bieber
8 threatened to kill me, and my wife shouldn't be freaked out." Defendant JAMES continued
9 in another text, stating that there are multiple witnesses to Plaintiff threatening to kill him:
10 "There are witnesses to Bieber... besides its not me... my wife is completely freaked out
11 since your post."

12
13
14 19. Plaintiff has never made the threatening statements attributed to him by
15 defendant JAMES, and never has uttered any threatening words, directly or indirectly,
16 relative to defendant JAMES. Defendant JAMES has published false and misleading
17 statements attributed to plaintiff in order to cause plaintiff harm, and which has caused
18 plaintiff harm in his reputation, business and standing in the community.
19

20
21 **FIRST CAUSE OF ACTION**

22 **(Defamation)**

23 **(As Against Defendant JAMES and DOES 1-50)**

24 20. Plaintiff re-alleges and incorporates herein by reference paragraphs 1
25 through 19 as though fully set forth herein.

26 21. Defendant JAMES made the false statements that Plaintiff threatened to
27 kill him as identified above. Defendant JAMES published the statements to individuals
28 other than the Plaintiff. The statements made by JAMES were viewed by individuals other

1 than the Plaintiff.

2 22. The statements that JAMES made were false and were not privileged.

3 23. Any individual who read the text messages and/or heard defendant
4 JAMES' statements would reasonably understand that the statements were about the
5 Plaintiff.
6

7 24. Defendant JAMES knew that the statements were false or failed to use
8 reasonable care to determine the truth or falsity of the statements.
9

10 25. The statements made by defendant JAMES exposed the Plaintiff to
11 hatred, contempt, ridicule, or disgrace, or caused the Plaintiff to be shunned or avoided, or
12 tended to injure the Plaintiff in his occupation.

13 26. As a direct and proximate result of defendant JAMES' conduct, Plaintiff
14 has suffered damages and will continue to suffer damages in the future including special
15 damages and lost profits in an amount to be proven at trial.
16

17 27. Defendant JAMES and each of them, acted with oppression and malice
18 and with the intention of causing Plaintiff injury and harm. Defendant JAMES' conduct was
19 despicable, and Plaintiff is entitled to an award of exemplary and punitive damages in an
20 amount to be proven during trial.
21

22 **SECOND CAUSE OF ACTION**

23 **(Defamation Per Quod)**

24 **(As Against Defendant JAMES and DOES 1 – 50)**

25 28. Plaintiff re-alleges and incorporates herein by reference paragraphs 1
26 through 27 as though fully set forth herein.
27

28 29. Defendant JAMES made the false statements identified above.

1 Defendant JAMES published the statements knowing that they would be viewed by
2 individuals other than the Plaintiff. The statements made by JAMES were reviewed by
3 individuals other than the Plaintiff.
4

5 30. The statements that defendant JAMES made were false and were not
6 privileged.

7 31. Any individual who read or heard the statements would reasonably
8 understand that the statements tended to injure Plaintiff in his occupation and/or expose
9 him to hatred, contempt, ridicule, or shame, and/or to discourage others from associating or
10 dealing with them.
11

12 32. Defendant JAMES failed to use reasonable care to determine the truth or
13 falsity of the statements.

14 33. The statements made by Defendant JAMES exposed the Plaintiff to
15 hatred, contempt, ridicule, or disgrace, or caused the Plaintiff to be shunned or avoided, or
16 tended to injure the Plaintiff personally and in his occupation. As a direct and proximate
17 result of defendant JAMES' conduct, Plaintiff has suffered damages and will continue to
18 suffer damages in the future including special damages and lost profits to be proven at trial.
19

20 34. Plaintiff's business, trade, profession and occupation have been harmed
21 as a direct result of Defendant JAMES' conduct. Defendant JAMES' conduct was a
22 substantial factor in causing Plaintiff's actual damages.
23

24 35. Defendants JAMES and each of them, acted with oppression, fraud, and
25 malice and with the intention of causing Plaintiff injury and harm. Defendant JAMES'
26 conduct was despicable, and Plaintiff is entitled to an award of exemplary and punitive
27 damages in an amount to be proven during trial.
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THIRD CAUSE OF ACTION

(Trade Libel)

(As Against Defendant JAMES and DOES 1 – 50)

36. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 35 as though fully set forth herein.

37. The statements that Defendant JAMES published would be clearly or necessarily understood to have disparaged Plaintiff.

38. The statements were untrue.

39. Defendant knew that the statements were untrue and/or acted with reckless disregard of the truth or falsity of the statements.

40. Defendant knew or should have recognized that someone else might act in reliance on the statements, causing Plaintiff's financial loss.

41. Plaintiff's business, trade, profession, and occupation have suffered direct financial harm because someone else acted in reliance on the statements and photographs.

42. Defendant's conduct was a substantial factor in causing Plaintiff's actual damages.

FOURTH CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage)

(As Against Defendant JAMES and DOES 1 – 50)

43. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 42 as though fully set forth herein.

44. Plaintiff had existing business relationships with a variety of third parties including individuals and companies. Plaintiff also had the existence of a prospective business relationship with these third parties. Specifically, over the years,

1 individuals and companies have hired Plaintiff for direct mail services. Many individuals
2 and companies retained the Plaintiff's on a repeated basis.

3 45. Plaintiff and these third parties were in an economic relationship that
4 probably would have resulted in an economic benefit to the Plaintiff. Plaintiff had the
5 probability of future economic benefit from these business relationships.
6

7 46. Defendants knew of the relationship that Plaintiff had with these third
8 parties.
9

10 47. Defendant's conduct as described above, was wrongful. By engaging in
11 the conduct identified above, defendant JAMES intended to disrupt the relationship
12 Plaintiff has with these third parties, and/or the Defendant knew that disruption of the
13 relationship was certain or substantially certain to occur.

14 48. The relationship that Plaintiff had with these third parties was disrupted.

15 49. As direct and proximate result of Defendant's conduct, Plaintiff has
16 suffered damages and will continue to suffer damages in the future in an amount to be
17 proven at trial.
18

19 50. Defendant's conduct was a substantial factor in causing Plaintiff's
20 damages.
21

22 **WHEREFORE**, Plaintiff prays judgment against Defendant and each of them as
23 follows:

- 24 1. For compensatory damages according to proof at trial;
25 2. For punitive damages according to proof at trial;
26 3. For costs of suit incurred in litigating this action; and
27 4. For such other further relief as the court deems just and proper.
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BERGKVIST, BERGKVIST & CARTER, LLP

DATED: May 15, 2020

By: *Paul Carter*
PAUL J. CARTER, ESQ.
Attorney for Plaintiff,
JAMES BIEBER